

### **REMARKS**

The specification has been amended to provide patent publication numbers. The claims have not been amended in view of the following.

#### ***Claim Rejections –35 USC §102***

Claims 1, 4 and 5 are rejected under 35 USC 102(b) as being anticipated by US Patent 5,827,744 to Fose et al.

Fose discloses a rotatable sampling arm 24 supporting a hollow, liquid carrying sample probe 30 (Col. 3, lines 62-66), the sampling arm 24 also vertically translatable so that the sample probe 30 may be oriented over a sample container 14 and withdraw sample therefrom (Col. 4, lines 5-15). Fose's device is said to be useful in a conventional chemical analyzer, such as the Dimension® clinical analyzer (Col. 3, lines 31-32; now sold by Dade Behring Inc., Deerfield, IL) Although Fose is silent as to the nature of the sample container, it is well known that the Dimension® clinical analyzer supports open sample containers (containers not closed with a closure) in order to avoid the well-documented difficulties associated with "sampling from closed containers." Because Fose is dealing with open sample containers, Fose does not disclose a "vertical drive adapted to drive a probe through a closure".

Paragraph 59 in the specification describes an important feature of the present invention as the use of manifold 42M "in a through-the-closure tube aspirating and puncturing Vertical Drive 42V." This feature of Applicant's invention is the basis for the "the vertical drive adapted to drive a probe through the closure" limitation found in independent claim 1.

Thus, Fose does not teach all the features of independent claim 1. In particular, it cannot be said that claim 1 is anticipated by Fose since Fose does not disclose a vertical drive adapted to drive a probe through a closure. Accordingly, Applicant respectfully submits that claim 1 is allowable over the prior art. Regarding dependent claims 4 and 5, these claims are allowable for at least the reasons as corresponding claim 1. Therefore, Applicant respectfully requests removal of this rejection.

Claims 1, 2, 5 and 6 are rejected under 35 USC 102(b) as being anticipated by US Patent 5,531,960 to Zelinka.

Zelinka discloses a device to determine the Dissolved Oxygen (DO) content of samples in sample containers. Although Zelinka is silent as to the nature of the sample containers, and examination of Fig. 3 shows that the sample containers 42 have outwardly flared openings that are suitable for insertion of "probe tips 51 with a tapered sensor apparatus (and sometimes a stirring mechanism)" (Col. 4, lines 63-67). Clearly such a probe tip would not be suitable for puncturing a closed sample container. Further, at Col. 6, lines 57-62, Zelinka's device is described cleaning the probe in a way that cleaning fluid drips between the rows of sample containers "without diluting or contaminating the test samples", and this would not be necessary if the sample containers were closed with a closure.

As described above, Applicant's invention is a sampling aliquotter with a special design feature to overcome at least one of the difficulties associated with "sampling through a closed container", that being the tendency of a closure to be pulled partially out of a closed container when a sampling probe is extracted from the container through the closure. This limitation of claim 1 as having a "vertical drive adapted to drive a probe through the closure" is further limited by claim 2 wherein the vertical drive comprises a sample tube retainer that is lowered into contact with the closure to secure the closure in position while the probe is retracted from the closure. See paragraph 62 in the specification.

Thus, Zelinka does not teach all the features of independent claim 1. In particular, it cannot be said that claim 1 nor claim 2 are anticipated by Zelinka since Zelinka does not disclose a vertical drive adapted to drive a probe through a closure. Accordingly, Applicant respectfully submits that claim 1 is allowable over the prior art. Regarding dependent claims 5 and 6, these claims are allowable for at least the reasons as corresponding claim 1. Therefore, Applicant respectfully requests removal of this rejection.

### ***Claim Rejections –35 USC §103***

Claim 3 rejected under 35 USC 103(a) as being unpatentable over either Fose et al. or Zelinka in view of U. S. Patent No. 5,347,878 to Souvaniemi.

Souvaniemi teaches a pipette assembly with a locking feature. The Examiner states that it would have been obvious to incorporate a locking mechanism into the sampling arms of Fose et al. or Zelinka to avoid mishaps in aspirating or dispensing the sample fluid. In view of the above remarks concerning the deficiency of Fose et al. and Zelinka in teaching a sampling aliquotter having a vertical drive adapted to drive a probe through a closure, the addition of a locking feature like found in Souvaniemi to the teachings of Fose et al. and Zelinka fails to replicate Applicant's invention. The addition of a locking feature to a sampling probe or tip suitable for sampling from open containers does not adapt the probe or tip to penetrate a closure. The rejection is thus felt to be improper and Applicant respectfully requests removal of this rejection..

***Conclusion***

Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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